

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
PROBATE AND ADMINISTRATION CAUSE NO. E015 OF 2020

IN THE MATTER OF THE ESTATE OF THE LATE KWAMBAI SAINA alias JOSEPH
KWAMBAI alias KWAMBAI ARAP SAINA

BETWEEN

PRISCA YATORCREDITOR

VERSUS

MAGRINA J. SAINA.....1ST PETITIONER

DAVID SAINA.....2ND PETITIONER

UASIN GISHU COUNTY GOVERNMENT.....INTERESTED PARTY/APPLICANT

RULING

1. I delivered a Ruling in this matter on 3/11/2023 arising from an Application dated 21/04/2022 filed by the Creditor. This was before the Interested party emerged and filed the subsequent Application the subject of this instant Ruling. In the Ruling delivered on 3/11/2023, I made orders as follows:

“i) Pending the hearing and determination of this Cause or until further directions are given by this Court, the Petitioners and/or the Director or Department of Survey, or the Registrar of Lands, whether at the Uasin Gishu County or National Government, or any other governmental or County authority in charge of land survey or registration, is or are hereby restrained, either by themselves, their agents or servants and/or any other person acting under their instructions, from conducting any survey exercise upon all that parcel of land known as Eldoret Municipality/Block 25 (Luliet) 3, and in the event that any such survey has already been conducted, then they are restrained from implementing the results thereof or effecting the registration of any changes on the subject plans or amendments arising therefrom.

ii) In the meantime, if no Administrator has not been appointed, then the Deputy Registrar is hereby directed to forthwith process the Petition for Letters of Administration Intestate filed by the Petitioners on 12/11/2020.

iii) Costs of this application will be in the cause.”

2. The Interested Party has now filed the Notice of Motion dated 1/08/2024, through **Messrs Kalya & Co. Advocates**, in which it basically seeks review, and setting aside of the above orders made in the Ruling delivered on 3/11/2023.
3. The Application is supported by the lengthy Affidavit sworn by the Applicant's County Solicitor, **B.K. Bulbul**, who deponed that the Creditor, before filing the Application dated 21/04/2022 in respect to which this Court rendered the Ruling dated of 3/11/2023, had earlier filed a similar Application dated 25/1/2023 in **Eldoret ELC Case No. 349 of 2016; Prisca Yator vs. Uasin Gishu County Government and Attorney General**, in which she sought orders stopping implementation of mutation approved by the Uasin Gishu County Surveyor on 6/7/2021, and that the same be quashed and a new mutation drawn, but which Application was dismissed. He deponed that before that dismissed Application was filed, the Court in **Eldoret ELC Case No. 349 of 2016**, had on 23/05/2019, issued orders addressing the same issues raised by the Creditor in her Application dated 21/4/2022, directing that the County Surveyor do visit the suit property within 2 weeks to confirm whether a survey was carried out, and a survey report be then filed in Court, and that the Court then fixed the matter for Mention on 20/06/2019. He stated that on 20/06/2019, the Court ordered that the County Surveyor do visit the property, within 14 days, and fixed a fresh Mention date for 16/07/2019, that on 16/07/2019, the Court ordered that the Survey be carried out within 14 days, and the Plaintiff therein do appoint a Surveyor within 7 days, upon which the Court fixed the matter for Mention for 25/09/2019. He then deponed that on 25/09/2019, the Court was informed that the Private Surveyor had died, upon which the matter was rescheduled to 23/10/2019.
4. He stated that the County Surveyor then, pursuant to the **ELC's** order, conducted the survey on 27/09/2019 and filed a Report, and later, on 5/12/2019, attended Court and gave expert evidence and the Report was thereafter adopted with the Court holding that the dispute was a pure survey/physical planning matter and rescheduled the case to 6/02/2020. Counsel deponed that the Plaintiff, dissatisfied with the order, filed an Application dated 28/02/2020 in which she sought that the Judge hearing the matter do recuse herself from the proceedings which Application was, by the Ruling delivered on 26/05/2020, dismissed but the Judge, nonetheless gave direction that the case to be mentioned before a different Judge for hearing and determination. He stated further that the Creditor thereafter filed another Application dated 25/01/2023 in the same **Eldoret ELC Case No. 349 of 2016**, seeking orders similar to those she had sought earlier in the same case, namely, stoppage and quashing of implementation of the mutation approved by the Uasin Gishu County Surveyor on 6/7/2021,

and that a new mutation be drawn, but which Application was, again, also dismissed on 25/01/2024.

5. He deponed that, dissatisfied with the dismissal, the Creditor, yet again, filed an Application dated 25/01/2024 seeking the setting aside of a consent order recorded on 16/07/2019, which Application is still pending determination. Counsel thus contended that the Creditor failed to disclose to this Court the multitude of Applications she had filed in **Eldoret ELC Case No. 349 of 2016**, including the fact that the fate of the survey over **Eldoret Municipality/Block 25 (Luliet) 3**, had already been determined in the SLC case. He averred that the Creditor has since made steps to effect the order made by this Court on 3/11/2023 by sending letters to the Interested Party's donors requesting them to cancel a proposed informal settlement project consequently adversely affecting the project which was to benefit the whole of the Ngomongo Settlement and Residents of the County of Uasin Gishu. He protested that the deliberate concealment of material facts by the Creditor denied the Interested Party a right to be heard before the orders made herein on 3/11/2023 were issued, and thus gave the Creditor an advantage which she used to misled the Court to make an ex-parte decision to the detriment of the Interested Party. Counsel stated further that the Creditor made a claim in yet another case, namely, **Eldoret Civil Case No. 963 of 2001; Prisca Yator vs Kwambai Saina** in which suit, the Creditor has sued as a purchaser seeking orders of special damages and specific performance.
6. He deponed that in the said **Eldoret Civil Case No. 963 of 2001**, issues were raised in respect to a blocked feeder road/drainage on the property which the Creditor occupies, in respect to which Reports dated 8/05/2003 and 15/10/2001 prepared indicated that the Creditor has blocked the road and a storm water drain, and recommended that the Creditor removes structures from the property to alleviate suffering of people living downstream, and that a demand letter was issued to the Creditor to that effect. Counsel asserted that the subject property, **Eldoret Municipality/Block 25 (Luliet) 3** is public property belonging to the Interested Property for utilization as a road reserve for construction of a drainage system, and that the structures constructed by the Creditor are therefore illegal and demolition thereof is justified. He then reiterated the matters already recounted above, and restated the law on review and on the right to be heard, and asserted that the Application has been filed promptly, without any unreasonable delay.
7. The Application is opposed by the Creditor in an even lengthier, verbose and unnecessarily repetitive Replying Affidavit running up to a whole 66 paragraphs, which she swore on 24/03/2025. A summary thereof is that the Creditor deponed that she is a purchaser of ½ acre

plot part of the estate of the deceased herein, **Kwambai Saina**, then owner of **Eldo/Mun/Block 25/3** generated from **L.R. No. 779/359** which itself emanated from **L.R. No.779/343** being among other purchasers, but that the family of the deceased has no intention of transferring the land. She deponed further that in the year 2016, the Interested Party trespassed, without authority, into her said portion of land despite existence of a caution. She protested that the mother title in question has now been closed for sub-division and new numbers recognized as per the registered map, that it is illegal to close the title for **Eldo/Mun/Block 25/3** yet she and others have a claim over it, and that vacating the orders of 3/11/2023 before the Succession Cause is completed is a pure act of impunity. She complained that she has been frustrated at the Land Registry since it took her more than 6 months to register the order and pay for a search, only to be told that the register for **Eldo/Mun/Block 25/3** has been closed for sub-division, and the green card forwarded for distribution of titles to 47 purchasers in accordance with the subdivision of 6/07/2021, under which portions belonging to her, including other 64 purchasers, were transferred to unknown entities. Regarding the existence of **Eldoret ELC Case No. 349 of 2016** cited by the Interested Party, she maintained that she was not a party thereto at the material time.

8. She then contended that in 2020, the family of the deceased filed this Succession Cause without mentioning any liability to the estate of the deceased, which act prompted her (Creditor) to apply to be joined therein, which Application was allowed, that subsequently, the family acknowledged the existence of purchasers but mislead this Court that there were only 45 purchasers. She contended that in **ELC No. 349 of 2016**, there was an existing order restraining the Land Registrar from implementing or carrying out any survey work, and that although both **Eldoret ELC No. 349 of 2016** and this case (**Eldoret High Court Succession Cause No. E015 of 2020**) touch on the same title, the parties and prayers sought are different, and the two cannot therefore be “joined”. She deponed further that all that has been done against the Creditor was implemented after the death of the deceased, that some officials at the Interested Party have colluded to deprive her of her $\frac{1}{4}$ plot and demolish her house, and that all the purchases bought their portions before the death of the deceased. She also denied that her portion is a public utility, and stated that she must be fully compensated if the portion is to be taken away. She confirmed that she issued letters to various entities and/or donors, including the World Bank, which then stopped the project and relocated it Huruma Ward, but denied agreeing to recording any consent before this Court, and accused several Advocates, some having acting for her, to have colluded to deprive her of the portion. She also denied that the **ELC** adopted any Survey Report.

9. The parties then filed written Submissions. The Interested Party's Submissions is dated 22/05/2025, while the Creditor's is dated 8/09/2025.

Interested Party's Submissions

10. Although the Interested Party has filed a 10-page Submissions, apart from restating the well-known principles applicable in determining Applications seeking Review of Court orders, and the requirement to disclose material facts to the Court, and also citing provisions of the law and authorities, the Submissions is simply a repetition of the contents of the Supporting Affidavit already recited. I do not therefore deem it necessary to again recount the same, save to state that Counsel for the Interested Party reiterated that the impugned orders obtained in this Cause by the Creditor on 3/11/2024 were so obtained as a result of non-disclosure by the Creditor of the material fact that there existed an ongoing case at the **Environment and Land Court (ELC)**, namely, **Eldoret ELC Case No. 349 of 2016**, in which the issues raised by the Creditor in the subject Application had already been determined.

Creditor's Submissions

11. The Respondent, too, restated the principles applicable in determining Applications seeking Review of Court orders, and cited relevant provisions of the law and authorities. She then submitted that the reasons offered by the Interested Party as supporting the Application, namely, that there was non-disclosure of the already existent orders made by the **ELC** on the same issues raised by the Creditor, and that the Creditor's Application seeking similar orders had already been dismissed, were not sufficient reasons for review. According to her, the existence of the orders of the **ELC** were alluded to by this Court in its impugned Ruling, at paragraph 7 at which it referred to the Replying Affidavit filed in the **ELC** case and, as such, it is not true that the orders of the **ELC** in question were not within the Court's knowledge or were not disclosed. She contended further that there is no allegation that there is an "**error apparent on the face of the record**", and also that the averments of "**non-disclosure of material facts**" is not a "**sufficient reason**" within the meaning contemplated in **Order 45 Rule 1** of the **Civil Procedure Rules**, nor is it analogous or *ejusdem generis* to the other grounds set out therein. She also contended that the Interested Party is not a proper party in these proceedings, that a party who wishes to be joined as an Interested Party in an ongoing suit must first seek leave of the Court, and that masquerades, meddlesome and interlopers cannot be allowed to make Applications at whim as this will end up undermining the authority of the Court. She cited the case of **Agricultural Finance Corporation vs Lengelia Ltd [1985] KLR 766**. In the end, she submitted that the dispute before this Court being on Succession, the Court, invoking its inherent powers, preserved the estate of the deceased **Eldoret High Court Succession Cause No. E015 of 2020**

pending hearing and determination of the Cause, and that the Interested Party is a busy body merely applying delay tactics and mischief under the pretext of having an interest. She then prayed that the Application be dismissed for reason of “gate crushing” by the Interested Party.

Determination

12. The issues raised in this matter, and which I am called upon to determine may be framed in the following terms:

- i) **Whether the Interested Party has the locus to file the instant Application without first seeking leave to participate in this matter.**
- ii) **Whether the Court should review and set aside its Ruling rendered on 3/11/2023 on the ground that it was obtained by non-disclosure of material facts.”**

13. Regarding issue (i) above, namely, the Interested Party’s participation in this Succession Cause, and/or its *locus* to file the instant Application, I am not persuaded that the Interested Party needed to apply for leave to file the instant Application. This is because the Interested Party is not seeking to join this matter as a substantive party, rather its interest is simply limited to bringing to this Court’s attention the alleged fact that the orders issued by this Court on 3/11/2023 were allegedly obtained by deceit, namely, non -disclosure of the fact that the ELC had already dealt with or determined the same issues that gave rise to the orders issued on 3/11/2023. This is because the Interested Party has submitted that it is an entity that is directly affected by the said orders. The Interested Party is therefore expected to disappear from this matter as soon as the instant Application is determined as it would have no further interest in this matter after that. For these reasons, I find no prejudice that has been suffered by the Creditor as a result of the omission by the Interested Party to apply for leave to file the Application. I therefore overrule this challenge.

14. However, even assuming that the Interested Party needed to seek such leave, I hereby invoke this Court’s inherent powers under the **Law of Succession Act** and ratify the Interested Party’s filing of the instant Application as valid and authorized by this Court, which ratification is now therefore deemed as leave granted to the Interested Party to participate in this matter, but limited to only filing and arguing the instant Application, and to file any other pleading or do any other act in this matter that arises from, or is connected to or appertains thereto.

15. On issue (ii), I may restate that Review of orders in a Succession Cause is governed by **Rule 63(1)** of the **Probate and Administration Rules**, which provides as follows:

“63. Application of Civil Procedure Rules and High Court (Practice and Procedure) Rules

(1) Save as is in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Order 5, rule 2 to 34 and Orders 11, 16, 19, 26, 40, 45 and 50 (Cap. 21, Sub. Leg.), together with the High Court (Practice and Procedure) Rules (Cap. 8, Sub. Leg.), shall apply so far as relevant to proceedings under these Rules.

16. It is therefore clear from the foregoing that the only provisions of the **Civil Procedure Rules** imported to the **Law of Succession Act** are those listed above and which includes **Order 45** of the **Civil Procedure Rules**, which relates to Review (see **John Mundia Njoroge & 9 Others vs. Cecilia Muthoni Njoroge & Another [2016] eKLR**).

17. In the circumstances, any party seeking review of orders in a probate or Succession matter must meet the requirements set under **Order 45(1)**. The same provides as follows:

“1. (1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed,

and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the Court which passed the decree or made the order without unreasonable delay.”

18. **Order 45** therefore provides for 3 circumstances under which an order for review can be made. The first one is where there has been *“discovery of new and important matter or*

evidence”, the second is where there has been “*a mistake or error apparent on the face of the record*” and the third is “*for any other sufficient reason*”.

19. The Interested Party’s grievance is that the orders obtained in this Cause by the Creditor by way of the Ruling delivered on 3/1/2023, were so obtained as a result of non-disclosure by the Creditor of the material fact that her Application filed in **Eldoret ELC Case No. 349 of 2016**, which had sought the same or similar orders she again sought before this Court, had already been dismissed by the **ELC**. The other limb of the argument is that the Creditor failed to disclose to this Court that the **ELC** had already ordered that the same survey work the Creditor asked this Court to stop, do proceed and had even given timelines for the process.
20. Indeed, it is trite law that when an order is sought from a Court, the Applicant has a duty to disclose to that Court all material facts relevant to the matter. Failure to do so constitutes a fatal breach that can lead to setting aside of the order, if granted. It is also now generally accepted that “*non-disclosure of material facts*” constitutes a “*sufficient reason*” or “*discovery of new and important matter*,” justifying Review to prevent an abuse of the Court process.
21. The issue of non-disclosure of material facts was discussed by the Court of Appeal in the case of **Bahadurali Ebrahim Shamji v. Al Noor Jamal & 2 Others Civil Appeal No. 210 of 1997**, in which it Court affirmed the following excerpt from the case of **The King v. The General Commissioners for the Purposes of Income Tax Acts for the District of Kensington: Ex parte Princess Edmond De Polignac [1917] All E. R. 486**.

“It is perfectly well settled that a person who makes an ex parte application to the Court - that is to say, in the absence of the person who will be affected by that which the Court is asked to do - is under an obligation to the Court to make the fullest possible disclosure of all material facts within his knowledge, and if he does not make that fullest possible disclosure, then he cannot obtain any advantage from the proceedings, and he will be deprived of any advantage he may have already obtained by him. That is perfectly plain and requires no authority to justify it.”

Scrutton L. J. at pages 513 - 514 said:

“Now that rule giving a day to the Commissioners to show cause was obtained upon an ex parte application; and it has been for many years the rule of the Court, and **Eldoret High Court Succession Cause No. E015 of 2020**

one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts - facts, not law. He must not misstate the law if he can help it - the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement.”

22. I also have to disabuse the Creditor over her submission that “*non-disclosure of material facts*” does not fall within the phrase “*any other sufficient reason*” as contemplated in **Order 45** cited above because it is not analogous with the other grounds specified in the order. In doing so, I am guided by the Court of Appeal holding in the case of **Pancras T. Swai v Kenya Breweries Limited [2014] eKLR**, in which the Court stated the following:

“29. Order 44 rule 1 (now Order 45 rule 1 in the 2010 Civil Procedure Rules) gave the trial Court discretionary power to allow review on the three limbs therein stated or “*for any sufficient reason.*” As repeatedly pointed out in various decisions of this Court, the words, “*for any sufficient reason*” must be viewed in the context firstly of Section 80 of the Civil Procedure Act, Cap 21, which confers an unfettered right to apply for review and secondly, on the current jurisprudential thinking that the words need not be analogous with the other grounds specified in the order. In *Sarder Mohamed v. Charan Singh Nand Sing and Another (1959) EA 793*, the High Court correctly held that Section 80 of the Civil Procedure Act conferred an unfettered discretion in the Court to make such order as it thinks fit on review and that the omission of any qualifying words in the Section was deliberate. In *Shanzu Investments Limited v. Commissioner for Lands (Civil Appeal No. 100 of 1993)* this Court with respect, correctly invoked and applied its earlier decision in *Wangechi Kimata & Another Vs. Charan Singh (C.A. No. 80 of 1985)* (unreported) wherein this Court held that:

“*any other sufficient reason need not be analogous with the other grounds set out in the rule because such restriction would be a clog on the unfettered right given to the Court by Section 80 of the Civil Procedure Act; and that the other grounds set out in the rule did not in themselves form a genus or class of things which the third general head could be said to be analogous.*”

30. The discovery of new and important matter or evidence or mistake or error apparent on the face of the record or for any other sufficient reason in rule 1 of Order 44 (now Order 45 in 2010 Civil Procedure Rules) relates to issues of facts which may emerge from evidence. The discovery does not relate or refer to issues of law. The exercise of due diligence referred to in rule 1 refers to discovery of facts but does not relate to ascertainment of existing law which the court is deemed to be alive to.”

23. In this case, the Application that gave rise to my Ruling delivered on 3/11/2023 was the Creditor’s Application dated 21/4/2022, in which she sought orders as follows:

“i) [.....] spent.

ii) *That the Respondents and the Department of Survey at the County of Uasin Gishu or their agents and are hereby restrained from conducting survey exercise upon all that parcel of land known as Eldoret Municipality/ Block 25 (Luliet) 3 until the probate proceedings and issue therein touching upon the Applicant are heard and determined.*

iii) *That Director of Survey be and is hereby restrained from effecting the registration of any changes on the plan of all that parcel of land otherwise known as Eldoret Municipality/ Block 25 (Luliet) 3 until the probate proceedings herein are heard and determined.*

iv) *That the Respondents/Petitioners herein be are hereby ordered to include the name of the Applicant in the list submitted by the Petitioners to this Honourable Court as a beneficiary with a purchaser’s interest.*

“v) *Costs of this Motion be provided for.*

24. The Interested Party has now exhibited a copy of the Creditor’s earlier Application dated 25/01/2022 she filed in the said **Eldoret ELC Case No. 349 of 2016; Prisca Yator vs. Uasin Gishu County Government and Attorney General**. That Application sought orders as follows:

“i) [.....] spent.

ii) That there be an order of this Honourable Court stopping the implementation and the Department of Survey at the County of Uasin Gishu or their agents and are hereby restrained from conducting survey exercise upon all that parcel of land known as Eldoret Municipality/ Block 25 (Luliet) 3 until the probate proceedings and issue therein touching upon the Applicant are heard and determined.

25. It is evident that the above Application filed in **Eldoret ELC Case No. 349 of 2016**, and the one filed herein, dated 21/04/2022, both touch on the same issues. However, although the Interested Party has submitted that the said Application filed at the **ELC** was dismissed, it is curious that no copy of any Ruling or order has been exhibited to demonstrate that indeed the Application was dismissed as alleged, or even that it was heard and determined. To this extent, the allegation that the issues brought to this Court by the Creditor in the said Application had already been determined by the **ELC** remains unproven.
26. The Interested Party has however exhibited a copy of an order given much earlier on 16/07/2019 in the same **Eldoret ELC Case No. 349 of 2016**, and also an extract of proceedings, though incomplete, conducted in that Court on 16/07/2019, and also on other dates before and after 16/07/2019, which order and proceedings indicate that the **ELC** had ordered that the process of survey of the subject parcel of land, **Eldoret Municipality Block 25 (Luliet)/3**, the same property in issue in this Succession Cause, be undertaken, and even gave timelines. There is no allegation that these orders have ever been vacated or set aside, and I, thus, believe that the same remain in force to date. The Interested Party has also exhibited a copy of a subsequent Application dated 6/02/2024 filed by the Creditor in the same **Eldoret ELC Case No. 349 of 2016**, in which she sought, apart from recusal of **Odeny J** from handling the case, an order that *“the Defendant/Respondent either by itself, Land Registrar Uasin Gishu County, its agents or any other, acting on its behalf hereby be restrained from implementation, or approving, transferring titles of Eld/Mun/Block 25/3”*. Also exhibited are copies of correspondence confirming that indeed, the issue of survey and/or implementation of changes on the plan of all that parcel of land were matters that were, at all material times, active before the **ELC**.
27. There is therefore no doubt that the nature of the orders sought by the Creditor before this Court by way of her Application dated 21/04/2022, which gave rise to my Ruling rendered on 3/11/2023, was such that they raised issues that were at that time, already very actively in

issue before the **ELC**, and upon which the **ELC** had already issued orders. That was a material fact that ought to have been disclosed to this Court.

28. The Creditor has pointed out that in my said Ruling of 3/11/2022, at paragraph 7, while reciting the Creditor's case, I mentioned the said **Eldoret ELC Case No. 349 of 2016**, which therefore means that the Creditor had disclosed existence of the case. In commenting thereon, it is indeed true that at the said paragraph 7, I stated as follows in relation to the **ELC** case:

“7. The Applicant deponed further that during the Court proceedings in case 349/16 on 20/2/2022, she was served with a Replying Affidavit from Kalya & Co Advocates who are representing the County Government, the Affidavit contained a copy of an order dated 31/7/2019 allegedly entered into by consent, on 16/7/2019 she was present in Court before Hon. Lady Justice Odeny but her Counsel was absent, she therefore never entered into any consent with anyone, she never knew of the existence of the said order and she was never served with the same, the concerned party took the order and served it upon at the Land Registrar and the Uasin Gishu Land Surveyor who approved and gave out numbers using the forged order to the 45 purchasers, she is only a purchaser/interested party and thus cannot give a consent for subdivision on another person's land,”

29. A consideration of the above statement indicates that all that I acknowledged that the Creditor brought to the Court's attention, was the issue of the consent recorded at the **ELC**, which she was alleged to have approved, but which she disowned, nothing more. The above statement does not anywhere, indicate that the Creditor disclosed to this Court that the **ELC** had already issued orders allowing or directing conducting of the survey and even gave timelines, and/or that the Creditor had filed the Application dated 25/01/2023 seeking similar orders stopping the same survey process that she asked this Court to stop. As a result of the Creditor's non-disclosure of material facts, this Court was misled into issuing orders that have resulted into a situation where there are two conflicting orders from two different Courts, a situation that cannot be countenanced. What the Creditor did was to steal a march on the Court, conduct that cannot be tolerated at all.

30. Before I conclude, I just wish to draw attention to the following statement that I had made in my said Ruling dated 3/1/2023 in respect to the Creditor's claims made in this Succession Cause as a purchaser.

“27. In respect to prayer 4 of the Application, the Applicant seeks that her name be included in the list of persons submitted by the Petitioners as having a purchasers’ interest in the estate. As already stated, the Petitioners have annexed a list of the Creditors and the Applicant’s name appears at No. 44 thereon. Prayer No. 4 is therefore settled.

“28. As aforesaid, the only issue raised by the Petitioners is that the acreage purchased by the Applicant is yet to be established. If the parties can agree on this issue, then the Court may adopt the same and proceed to factor it in determining distribution. However, should there be no agreement, then I may just perhaps mention that the Applicant not being a survivor of the deceased nor a beneficiary, a decision may have to be made on whether such dispute can validly be canvassed in this Succession Cause or whether the same should be placed before the Environment & Lands Court or any other appropriate forum.

“29. On this point, I cite the following holding made by Musyoka, J in Re Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR:

“26. It may be argued that the subject land is estate property and by dint of that fact the probate court would have jurisdiction thereon. The position is not as simple. The Law of Succession Act, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.

Disputes of course do arise in the process. The provisions of the Law of Succession Act and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who are neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the Law of Succession Act and the Probate and Administration Rules. Such have to be resolved through the structures created by the Civil

Procedure Act and Rules, which have elaborate rules on suits by and against executors and administrators (emphasize added).”

31. The above statement shows that this Court had already given an indication that, in its view, the Creditor’s grievances as a purchaser may perhaps be better agitated before the **ELC**, rather than in a Succession Court. Now that it has transpired that indeed, there is already a case before the **ELC** dealing with some of the grievances brought here by the Creditor, I will stay the proceedings in this Cause pending hearing and determination of the said **ELC** case.

Final Orders

32. The upshot of my findings is that I rule and order as follows:

- i) The Interested Party’s Notice of Motion dated 1/8/2024 is hereby allowed, with the consequence that the orders granted in the Ruling dated 3/11/2023 delivered herein, are hereby vacated and/or set side.
- ii) To enable the **Environment and Land Court (ELC)** conclude the hearing and determination of **Eldoret ELC Case No. 349 of 2016**, I invoke this Court’s inherent powers under the Law of Succession Act, and stay the proceedings in this matter, pending hearing and determination of the said **Eldoret ELC Case No. 349 of 2016**.
- iii) The Creditor shall bear costs of this Application.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 18TH DAY OF MARCH 2026

.....
WANANDA JOHN R. ANURO
JUDGE

Delivered in the presence of:

Creditor - Ms. Prisca Yator, acting in person
Ms. Chepngetich for the Interested Party-Applicant
Ms. Kiplimo h/b for Ms. Metto for the Petitioners
Court Assistant: Brian Kimathi